

**House Energy and Commerce Committee Health Subcommittee Hearing:
Improving the Coordination and Quality of Substance Use Disorder Treatment
May 8, 2018**

On Tuesday, May 8, the House Energy and Commerce Committee, Subcommittee on Health held a hearing titled, “Improving the Coordination and Quality of Substance Use Disorder Treatment.”

For a webcast of the hearing, copy of the hearing advisory, background memo, opening statements and witness testimonies, see [here](#). A full hearing transcript is attached.

Witnesses that testified at the hearing included:

WITNESSES

- **The Honorable Earl Blumenauer, Member of Congress, Washington D.C.**
- **Dr. H. Westley Clark, Dean’s Executive Professor, Public Health Program, Santa Clara University**
- **Mr. Gerald DeLoss, Officer, Greensfelder, Hemker, and Gale, P.C.**
- **Mr. Jeremiah Gardner, Manager, Public Affairs and Advocacy, Hazelden Betty Ford Foundation**
- **Mr. Dustin McKee, Director of Policy, National Alliance on Mental Illness of Ohio**
- **Ms. Patty McCarthy Metcalf, Executive Director, Faces and Voices of Recovery**

Subcommittee Members and witnesses examined [draft legislation](#) (H.R. 3545), the Overdose Prevention and Patient Safety Act, that would align 42 CFR Part 2 regulations with the Health Insurance Portability and Accountability Act privacy rule. Rep. Earl Blumenauer (D-OR), co-authored the draft legislation with Rep. Markwayne Mullin (R-OK) and testified on the first panel.

At the conclusion of the hearing, Subcommittee Chairman Michael Burgess (R-TX) thanked the panelists and said, “There you have it, we’re going to have a vote on the floor.” He also submitted for the record a lengthy list of medical organizations that support the legislation as well as letters expressing opposition to H.R. 3545.

The hearing discussed the background of the Federal confidentiality law (42 C.F.R. Part 2, or Part 2) that was enacted in the 1970s after Congress recognized that stigma associated with substance use disorder (SUD) and fear of prosecution decreased the likelihood patients would enter into treatment. Part 2 regulations provide stronger protections for SUD treatment than other federal and state health privacy laws, including the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Because of disparities between HIPAA and Part 2, the health provider community has become increasingly frustrated with the restrictions that Part 2 places on their ability to improve the coordination and quality of care by sharing SUD treatment records. Access to a patient’s entire medical record, including addiction records, ensures that providers and organizations have all the information necessary for safe, effective, high quality treatment, and care coordination that addresses all a patient’s health needs. Failure to integrate services and supports can lead to risks and dangers to individual patients, such as dangerous drug interactions⁷ and problems related to medication adherence.

Rep. Blumenauer, Gerald DeLoss, Justin McKee and Jeremiah Gardner testified in support of the legislation saying Part 2 needs to be modernized and creates a significant barrier to the sharing of clinical data and the proper coordination. McKee and Gardner cited personal experience where medical

professionals prescribed a loved one opiate pain medication because they were not able to identify the patient as a high-risk individual with a history of SUDs.

Dr. Westley Clark and Patty McCarthy Metcalf argued against the legislation, saying it would have unintended consequences for individuals with SUDs who could be subject to discrimination and legal consequences in the event that their information is improperly used or disclosed. McCarthy said, "We do not want our highly sensitive, personal information shared for purposes of treatment, payment, healthcare operations or for any other purpose beyond current the rule without our express written consent or Part 2's other safeguards," testified McCarthy Metcalf. "The advocacy efforts to eliminate 42 CFR Part 2 have largely been driven by coalitions of hospital associations, insurers, treatment agencies, software vendors and pharmaceutical companies, without representation of patient advocacy groups or people in recovery from alcohol and other drug addiction."

Rep. Mullin got into a heated argument with Dr. Clark asserting there were holes in Dr. Clark's testimony regarding his legislation and how it could lead to discrimination for those with SUDs. Clark argued that the Americans with Disabilities Act (ADA) does not protect active substance users and the Department of Housing and Urban Development (HUD) has rules that can discriminate against people who are active substance users. Mullin said his legislation protects people with a SUD from being denied housing and employment and ended the exchange saying, "I completely disrespect your testimony because it's based on opinion, not fact."

Rep. Leonard Lance (R-NJ) mentioned a bill he plans to introduce that will target new resources for substance use disorder with Health Homes, which currently exist in four states. He said under the model of care in Vermont for example, the state has markedly expanded access to medication assisted therapy (MAT), reduced the use of alcohol, opiates and other illicit drugs, increased the use of hospital emergency departments, reduced illegal activities and run-ins with law enforcement and substantially improved family life, housing, stability, and emotional health.

Lance cited a January 2015 bulletin by CMS entitled *Designing Medicaid Health Homes for Individuals with Opiate Dependency Consideration for States*, that says one barrier to effective treatment and care coordination identified by Vermont and other participating states was 42-CFR Part 2. It says, "Collectively the three states cited federal confidentiality requirements as a barrier to effective integration of care and sharing of vital information between the health, home and other medical professionals." Rep. Lance asked DeLoss if aligning Part 2 with HIPAA would eliminate the barrier to effective integration of care in sharing vital information between the health home and other medical professionals and what sort of improved outcomes for patients could we expect to see if these were the case?

DeLoss said it would appear that aligning HIPAA with Part 2 would allow for the free flow of information between entities, as well as substance use disorder Part 2 programs. So that would coordinate the care to allow that information to be shared for the betterment of the quality of care, as well as ensuring that there is no, any type of drug that could interact negatively with anything that the individual is currently taking in the form of MAT.

Dr. Clark responded saying that most substances don't have medications available to treat them and that we are talking about essentially blaming individual autonomy and rights for the failure of the HITECH Act, the failure of practitioners to be adequately trained to address the issue of addiction, so we are blaming the very people that we're trying to help for the weaknesses of the delivery system. Dr.

Clark said families need to be involved in the patient's recovery because this is a family disease, so what we're talking about is not dealing with the system, we are talking about blaming the victim. He encouraged Committee members to look at the section of the bill which says, "To develop and disseminate model training programs for substance use disorder patient records."

Rep. Larry Bucshon (R-IN), a physician by training, said he has also dealt with patients who have not disclosed medications they are taking which has led to excessive bleeding or cannot be properly anesthetized, so this issue is not only about illicit drugs and alcohol and said physicians need more patient information in order to do their job properly. Rep. Bucshon asked Dr. Clark to clarify a statement from his written testimony -that providers should ask patients themselves about their substance use history- and asked if he really believes that patients are going to divulge that information.

Dr. Clark answered that every patient is not going to tell you everything about everything, but if time is taken to establish a rational relationship between what it is that intervention is going to do I think you will get more truth telling than you are aware. He said he has found that asking people things in a carefully designed non-judgmental way gets a better response than simply reading it in the chart. Rep. Bucshon noted that since Dr. Clark is a psychiatrist, his experience is different and in a medical situation if the patients don't tell you their medications there are real repercussions.

Other members expressed concerns with the bill, wondering if privacy protections went far enough, and worried whether "covered entities" — which are allowed to share data relatively freely — is too broad a category, allowing rather indiscriminate sharing. However most commented that the positives outweighed the negative. Rep. Morgan Griffith (R-VA) said, "Without something as an alternative, I'm voting for the bill."